



Journal of the House

State of Indiana

114th General Assembly

First Regular Session

Forty-ninth Meeting Day

Monday Morning

April 25, 2005

The House convened at 10:00 a.m. with the Speaker in the Chair.

The invocation was offered by Reverend Thomas Luchenbill, Christ Community Church, Carmel, the guest of Representative Gerald R. Torr.

The Pledge of Allegiance to the Flag was led by Representative Jeffrey K. Espich.

The Speaker ordered the roll of the House to be called:

T. Adams ☐	Klinker
Aguilera	Koch
Alderman	Kromkowski
Austin	Kuzman
Avery	L. Lawson
Ayres	Lehe
Bardon	Leonard
Bauer	J. Lutz
Becker	Mahern
Behning	Mays
Bischoff	McClain
Borders	Messer
Borror	Micon
Bottorff ☐	Moses
Bright	Murphy
C. Brown	Neese
T. Brown	Noe
Buck	Orentlicher
Budak	Oxley
Buell	Pelath
Burton	Pflum
Cheney	Pierce
Cherry	Pond
Cochran	Porter
Crawford	Reske
Crooks	Richardson
Davis	Ripley
Day	Robertson
Denbo	Ruppel
Dickinson	Saunders
Dobis	J. Smith
Dodge	V. Smith
Duncan	Stevenson
Dvorak	Stilwell
Espich	Stutzman
Foley	Summers ☐
Friend	Thomas
Frizzell	Thompson
Fry	Tincher
GiaQuinta	Torr
Goodin	Turner
Grubb	Ulmer
Gutwein	VanHaften
E. Harris	Walorski
T. Harris	Welch
Heim	Whetstone
Hinkle	Wolkins
Hoffman	Woodruff
Hoy	Yount
Kersey	Mr. Speaker

Roll Call 548: 97 present; 3 excused. The Speaker announced a quorum in attendance. [NOTE: ☐ indicates those who were excused.]

MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: On April 21, 2005, I signed into law House Enrolled Acts 1263, 1375, and 1402.

MITCHELL E. DANIELS, JR.
Governor

MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: On April 22, 2005, I signed into law House Enrolled Acts 1320.

MITCHELL E. DANIELS, JR.
Governor

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the President Pro Tempore of the Senate has appointed the following Senators a conference committee to confer on Engrossed House Bill 1075:

Conferees: Miller and Simpson
Advisors: Paul and Skinner

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the President Pro Tempore of the Senate has appointed the following Senators a conference committee to confer on Engrossed House Bill 1097:

Conferees: Ford and Mrvan
Advisors: Kenley and Hume

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the President Pro Tempore of the Senate has appointed the following Senators a conference committee to confer on Engrossed House Bill 1153:

Conferees: Zakas and Antich-Carr
Advisors: Bray and Broden

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that pursuant to Rule 81(b) of the Standing Rules and Orders of the Senate, President Pro Tempore Robert D. Garton has made the following change in conferees appointments to Engrossed House Bill 1200:

Advisor: Gard

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that pursuant to Rule 81(b) of the Standing Rules and Orders of the Senate, President Pro Tempore Robert D. Garton has made the

following change in conferees appointments to Engrossed House Bill 1431:

Advisor: Gard

MARY C. MENDEL
Principal Secretary of the Senate

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT ESB 201-1; filed April 22, 2005, at 10:37 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 201 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 3, line 5, after "being" insert ":

(1) a full-time employee of:

(A) the county; or

(B) one (1) of two (2) counties acting jointly under IC 36-1-7; or

(2)".

Page 3, line 6, block left beginning with "This".

Page 11, delete lines 8 through 42.

Page 12, delete lines 1 through 6.

(Reference is to ESB 201 as printed March 23, 2005.)

WYSS	RUPPEL
CRAYCRAFT	TINCHER
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT ESB 89-1; filed April 22, 2005, at 10:41 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 89 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-19-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) **This section does not apply to:**

(1) an implement of husbandry; or

(2) a farm tractor;

manufactured after June 30, 2006.

(a) A farm tractor and a self-propelled farm equipment unit or an implement of husbandry not equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped with the following:

(1) At least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of the vehicle.

(2) At least one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear of the vehicle.

(3) Two (2) red reflectors visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

The lights required by this subsection must be positioned so that one (1) lamp showing to the front and one (1) lamp or reflector showing to the rear will indicate the furthest projection of the tractor, unit, or implement on the side of the road used in passing the vehicle.

(b) A combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped with two (2) red reflectors that meet the following requirements:

(1) Are visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(2) Are mounted in a manner so as to indicate as nearly as practicable the extreme left and right rear projections of the towed unit or implement on the highway.

(c) A farm tractor and a self-propelled unit of farm equipment or an implement of husbandry equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped with the following:

(1) Two (2) single-beam or multiple-beam head lamps meeting the requirements of section 20 or 21 of this chapter or IC 9-21-7-9.

(2) Two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or in the alternative one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

The red lamps or reflectors must be mounted in the rear of the farm tractor or self-propelled implement of husbandry so as to indicate as nearly as practicable the extreme left and right projections of the vehicle on the highways.

(d) A combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system must at all times required by IC 9-21-7-2 be equipped as follows:

(1) The farm tractor element of each combination must be equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of section 20 or 21 of this chapter or IC 9-21-7-9.

(2) The towed unit of farm equipment or implement of husbandry element of each combination must be equipped with the following:

(A) Two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or as an alternative one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear.

(B) Two (2) red reflectors visible from a distance of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

The red lamps or reflectors must be located so as to indicate as nearly as practicable the extreme left and right rear projections of the towed unit or implement on the highway.

(3) A combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system must be equipped with the following:

(A) A lamp displaying a white or an amber light, or any shade of color between white and amber visible from a distance of not less than five hundred (500) feet to the front.

(B) A lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear.

The lamps must be installed or capable of being positioned so as to indicate to the front and rear the furthest projection of that combination on the side of the road used by other vehicles in passing that combination.

(e) A farm tractor, a self-propelled farm equipment unit, or an implement of husbandry must not display blinding field or flood lights when operated on a highway.

(f) All rear lighting requirements may be satisfied by having a vehicle with flashing lights immediately trail farm equipment in accordance with IC 9-21-7-11.

SECTION 2. IC 9-19-6-11.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11.3. (a) **This section applies to the following items manufactured after June 30, 2006, when operated on a highway:**

(1) An implement of husbandry.

(2) A farm tractor.

(b) An implement of husbandry or a farm tractor listed in subsection (a) must be equipped with:

(1) head lamps;

(2) tail lamps;

- (3) work lamps;
- (4) warning lamps;
- (5) extremity lamps;
- (6) turn indicators;
- (7) rear reflectors;
- (8) front and rear conspicuity material; and
- (9) front, rear, and side retroreflective material;

that comply with the standards contained in the American Society of Agricultural Engineers (ASAE) Standard S279.11 DEC01 or any subsequent standards developed by ASAE at the time the vehicle was manufactured.

SECTION 3. IC 9-19-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) **This section does not apply to:**

- (1) an implement of husbandry; or
- (2) a farm tractor;

manufactured after June 30, 2006.

(b) A vehicle, including an animal-drawn vehicle and a vehicle referred to in IC 9-19-1-1 not specifically required by this article to be equipped with lamps or other lighting devices, must at all times required by IC 9-21-7-2 be equipped with at least two (2) red reflectors visible from distances of one hundred (100) feet to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

SECTION 4. IC 9-21-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The Indiana criminal justice institute ~~may~~ **shall** adopt rules under IC 4-22-2 establishing standards and specifications for the design, materials, and mounting of a standard slow moving vehicle emblem for the uniform identification of slow moving vehicles.

(b) In adopting rules under subsection (a), the Indiana criminal justice institute shall ~~consider the standard markings used in other states and~~ **substantially adhere to** the current recommendations of the American Society of Agricultural Engineers, ~~the American National Standards Institute~~, and the Society of Automotive Engineers so that the slow moving vehicle emblem may be more universally recognizable and of adequate quality.

(c) **The Indiana criminal justice institute shall adopt revisions to the standards and specifications adopted as required under subsection (a) as amendments are made to the recommendations of the American Society of Agricultural Engineers, the American National Standards Institute, and the Society of Automotive Engineers regarding the slow moving vehicle emblem.**

SECTION 5. [EFFECTIVE JULY 1, 2005] (a) **To implement this act, the Indiana criminal justice institute may adopt temporary rules in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules.**

(b) **A temporary rule adopted under this SECTION expires on the earliest of the following:**

- (1) **The date rules are adopted under IC 9-21-9-5, as amended by this act.**
- (2) **The date another temporary rule is adopted under this SECTION to replace an earlier rule adopted under this SECTION.**
- (3) **December 31, 2006.**

(Reference is to ESB 89 as reprinted March 25, 2005.)

JACKMAN	CHERRY
HUME	BOTTORFF
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT ESB 67-1; filed April 22, 2005, at 10:42 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 67 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 3, line 6, before "The" insert **"A CMRS provider or a PSAP may recover costs under this chapter if the costs are incurred**

before July 1, 2005, and invoiced to the board not later than December 31, 2005."

Page 4, line 41, delete "all PSAPs have been reimbursed for their costs".

Page 4, delete line 42.

Page 7, line 2, before "The" insert **"(a)"**.

Page 7, after line 7, begin a new paragraph and insert:

"(b) This SECTION expires January 1, 2007."

(Reference is to ESB 67 as printed March 23, 2005.)

STEELE	RUPPEL
BRODEN	BISCHOFF
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT ESB 295-1; filed April 22, 2005, at 1:58 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 295 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 5.

Renumber all SECTIONS consecutively.

(Reference is to ESB 295 as reprinted April 8, 2005.)

STEELE	FOLEY
LANANE	PIERCE
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed Senate Bill 253 because it conflicts with SEA 43-2005 and SEA 106-2005 without properly recognizing the existence of SEA 43-2005 and SEA 106-2005, has had Engrossed Senate Bill 253 under consideration and begs leave to report back to the House with the recommendation that Engrossed Senate Bill 253 be corrected as follows:

Page 14, line 1, delete "IC 27-8-11-7" and insert "IC 27-8-11-8".

Page 14, line 3, delete "7." and insert **"8."**

(Reference is to ESB 253 as printed April 5, 2005.)

WHETSTONE, Chair
PELATH, R.M.M.
RIPLEY, Sponsor

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed Senate Bill 340 because it conflicts with HEA 1217-2005 without properly recognizing the existence of HEA 1217-2005, has had Engrossed Senate Bill 340 under consideration and begs leave to report back to the House with the recommendation that Engrossed Senate Bill 340 be corrected as follows:

Page 3, line 27, after "IC 31-19-17-2" insert **"**, AS AMENDED BY HEA 1217-2005, SECTION 2,".

Page 3, delete lines 35 through 42 and insert "to:

(1) the adoptive parents:

(A) ~~not later than the time the child is placed with the adoptive parents; at the time the home study or evaluation concerning the suitability of the proposed home for the child is commenced;~~ or

(B) with the consent of the adoptive parents, not more than thirty (30) days after the child is placed with the adoptive parents; and

(2) upon request, an adoptee who: ~~is:~~

(A) is at least twenty-one (21) years of age; and

(B) provides proof of identification."

(Reference is to ESB 340 as reprinted April 8, 2005.)

WHETSTONE, Chair
PELATH, R.M.M.
BUDAK, Sponsor

Report adopted.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 2:30 p.m. with the Speaker in the Chair.

Representative Summers, who had been excused, was present. Representatives Day, Friend, Goodin, Koch, and VanHaaften were excused.

Representative Kromkowski rose to a point of order requesting a quorum call. The Speaker ordered the roll of the House to be called. Roll Call 549: 67 members present. The Speaker declared a quorum present.

HOUSE MOTION

Mr. Speaker: I move that when we do adjourn, we adjourn until Tuesday, April 26, 2005 at 10:00 a.m.

T. BROWN

Motion prevailed.

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that pursuant to Rule 81(b) of the Standing Rules and Orders of the Senate, President Pro Tempore Robert D. Garton has made the following change in conferees appointments to Engrossed Senate Bill 397:

Advisors: Bray and Antich-Carr

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has not concurred in House amendments to Engrossed Senate Bill 432 and the President Pro Tempore has appointed the following Senators a conference committee to meet and confer with a like committee of the House on said bill, and to report thereon:

Conferees: Miller, Chair; and Skinner

Advisors: Mishler and Sipes

MARY C. MENDEL
Principal Secretary of the Senate

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT

ESB 233-1; filed April 25, 2005, at 12:35 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 233 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 35-42-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;

(3) in writing;

(4) by using a computer network (as defined in IC 35-43-2-3(a));

(5) by advertisement of any kind; or

(6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

(1) sexual intercourse;

(2) deviate sexual conduct; or

(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)).

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

(1) sexual intercourse;

(2) deviate sexual conduct; or

(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person; commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)).

(c) (d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

SECTION 2. [EFFECTIVE JULY 1, 2005] IC 35-42-4-6, as amended by this act, applies only to offenses committed after June 30, 2005.

(Reference is to ESB 233 as printed April 1, 2005.)

DROZDA	ULMER
LEWIS	L. LAWSON
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT

ESB 379-1; filed April 25, 2005, at 12:56 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 379 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.

SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.2. As used in this chapter, "cigarette manufacturer" means a person or an entity that does the following:

(1) Manufactures cigarettes.

(2) Does one (1) of the following:

(A) Participates in the Master Settlement Agreement (as defined in IC 24-3-3-6) and performs the person's or entity's financial obligations under the Master Settlement Agreement.

(B) Places the applicable amount into a qualified escrow fund (as defined in IC 24-3-3-7).

(3) Pays all applicable taxes under IC 6-7-1.

SECTION 3. IC 24-3-5-0.3 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.**

SECTION 4. IC 24-3-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

- (1) electronically using a computer network (as defined in IC 35-43-2-3);
- (2) by mail; or
- (3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual **or entity** at a designated address.

SECTION 5. IC 24-3-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "distributor" includes the following:**

(1) A distributor as defined in IC 6-7-1-6.

(2) A distributor as defined in IC 6-7-2-2.

SECTION 6. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. **However, the term does not include a cigar or pipe tobacco.**

SECTION 7. IC 24-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **Subject to section 4.5 of this chapter,** a merchant may not mail or ship ~~tobacco products~~ **cigarettes** as part of a delivery sale unless, before mailing or shipping the ~~tobacco products,~~ **cigarettes,** the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

- (i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and
- (ii) purchasing ~~tobacco products~~ **cigarettes** by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the ~~tobacco product~~ **cigarette** order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of ~~tobacco products~~ **cigarettes** by delivery sale is a taxable event for purposes of IC 6-7-1; ~~and IC 6-7-2;~~

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

SECTION 8. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. (a) This section applies to a merchant that is not a cigarette manufacturer.**

(b) Except as provided in subsection (d), a merchant may not mail or ship cigarettes as part of a delivery sale to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.

(c) If the commission determines that a merchant has violated subsection (b):

(1) a distributor may not accept a shipment of cigarettes from the merchant for a period, not to exceed one (1) year, determined by the commission; and

(2) the commission may impose a civil penalty, not to exceed five thousand dollars (\$5,000), on the merchant for each violation of subsection (b), as determined by the commission.

(d) A merchant may make a drop shipment of tobacco products to an Indiana resident or retailer that is billed through a distributor.

SECTION 9. IC 24-3-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A merchant who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products,~~ **cigarettes;** and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products,~~ **cigarettes;** and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 10. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A merchant shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.

(2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(3) The quantity of ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

SECTION 11. IC 24-3-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A merchant who delivers ~~tobacco products~~ **cigarettes** to a customer as part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1; ~~and IC 6-7-2~~; or

(2) place a legible and conspicuous notice on the outside of the container in which the ~~tobacco products~~ **cigarettes** are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these ~~tobacco products~~ **cigarettes** have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these ~~tobacco products~~ **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these ~~tobacco products~~ **cigarettes**."

(b) For a violation of this section the ~~alcohol and tobacco~~ commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 12. IC 24-3-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells ~~tobacco products~~ **cigarettes** by delivery sale to a person less than eighteen (18) years of age.

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 13. IC 24-3-5.4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. A person may not:

(1) affix a stamp to a package or other container of cigarettes; or

(2) sell, ~~or~~ offer or possess for sale, **or import for personal consumption** in Indiana cigarettes;

of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

SECTION 14. IC 24-3-5.4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) This section applies after July 31, 2003.

(b) Not later than January 20, April 20, July 20, and October 20 of a calendar year, **or more frequently if ordered by the department,**

the commission, or the attorney general, a distributor or stamping agent shall submit the following information to the department, the commission, and the attorney general:

(1) A list by brand family of the total number of cigarettes for which the distributor or stamping agent affixed stamps or otherwise paid taxes during the immediately preceding three (3) months.

(2) Any other information required by the department or the attorney general.

The distributor or stamping agent shall maintain and make available to the department, the commission, and the attorney general for a period of five (5) years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information that the distributor or stamping agent relied on in reporting to the department, the commission, and the attorney general.

(c) The attorney general may require a distributor or a tobacco product manufacturer to submit additional information to determine whether a tobacco product manufacturer is in compliance with this chapter. The additional information may include samples of the packaging or labeling of each of the tobacco product manufacturer's brand families.

SECTION 15. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Contraband Cigarettes

Sec. 1. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

Sec. 2. As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.

Sec. 3. As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.

Sec. 4. As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.

Sec. 5. As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.

Sec. 6. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.

Sec. 7. As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.

Sec. 8. As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

Sec. 9. (a) The commission may issue or renew a license to the following applicants:

(1) An importer.

(2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An importer or manufacturer that conducts business in Indiana must apply under this section for a license for the importer's or manufacturer's principal place of business. An importer or manufacturer that is issued a license shall display the license at the importer's or manufacturer's principal place of business.

(c) The commission shall prescribe the form and duration of a license issued under this section. However, a license may not be valid for more than three (3) years from the date of issuance.

(d) A license issued under this section is nontransferable.

(e) The commission shall not issue or renew a license under this section if:

(1) the applicant owes at least five hundred dollars (\$500) in taxes imposed under IC 6-7-1-12;

(2) the commission revoked the applicant's license within two (2) years before the application;

(3) the applicant commits an offense under IC 6-7-1-21;

(4) the applicant does not comply with IC 24-3-3-12; or

(5) the applicant violates IC 24-3-4.

(f) The commission may revoke or suspend a license issued under this section if the applicant:

(1) is not eligible to receive or renew a license under subsection (e); or

(2) violates this chapter.

Sec. 10. (a) A distributor may apply a stamp only to cigarettes

that are received from a licensed importer or licensed manufacturer.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as provided in IC 6-7-1-18.

Sec. 11. (a) A manufacturer or an importer may sell cigarettes in Indiana only to a distributor or a licensed importer.

(b) A manufacturer that sells cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.

(c) A distributor may sell cigarettes only to a distributor or a retailer.

(d) A distributor may obtain cigarettes only from another distributor, a licensed importer, or a licensed manufacturer.

(e) Except as provided in subsection (f), a retailer may obtain cigarettes only from a distributor.

(f) A retailer that is a holder of a certificate issued under IC 7.1-3-18.5 may purchase up to one thousand dollars (\$1,000) of cigarettes per week from another retailer that holds a certificate issued under IC 7.1-3-18.5.

Sec. 12. (a) This section does not apply to a distributor who:

(1) is a licensed manufacturer; and

(2) complies with section 13 of this chapter.

(b) A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:

(1) The number and brand of cigarettes:

(A) distributed;

(B) shipped into Indiana; or

(C) shipped within Indiana;

during the immediately preceding month.

(2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must include:

(1) the name and address of the parties to the transaction; and

(2) the quantity by brand style of cigarettes involved in the transaction.

(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.

(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.

(d) An importer or a manufacturer shall maintain documentation under this section for five (5) years from the date of the transaction.

(e) The commission may:

(1) obtain access to; and

(2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

Sec. 14. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

Sec. 15. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

(1) five (5) times the value of the cigarettes involved in the violation; or

(2) one thousand dollars (\$1,000).

(b) A civil penalty under this section is in addition to any other penalty imposed.

Sec. 16. (a) Either or both of the following may bring an action to prevent or restrain violations of this chapter:

(1) The attorney general or the attorney general's designee.

(2) A person that holds a valid permit under 26 U.S.C. 5712.

(b) A person that brings an action under subsection (a) shall provide notice to the attorney general of the commencement of the action.

SECTION 16. IC 24-4-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of a product listed in subsection (b), if the authorization is not false, fraudulent, or fraudulently obtained.

(b) An unused property merchant may not offer at an unused property market for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, personal care products, nonprescription drugs, or medical devices, or cigarettes or other tobacco products.

SECTION 17. IC 34-24-1-1, AS AMENDED BY SEA 47-2005, SEC. 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;
 (B) facilitate the commission of; or
 (C) escape from the commission of;
 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

- (A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
- (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47-5.

~~(12) Cigarettes that are sold in violation of IC 24-3-5-2, cigarettes that a person attempts to sell in violation of IC 24-3-5-2, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5-2.~~

~~(13)~~ (12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

~~(14)~~ (13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or

methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 18. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 19. [EFFECTIVE JULY 1, 2005] **Notwithstanding IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined in IC 24-3-6-2, as added by this act) is not required to report the information required in IC 24-3-6-12(b)(2), as added by this act, until the later of the following:**

(1) When the attorney general becomes capable of receiving the information reported in an electronic format.

(2) July 1, 2008.

(Reference is to ESB 379 as reprinted April 6, 2005.)

WEATHERWAX	CHERRY
HOWARD	PELATH
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

ACTION ON RULES SUSPENSIONS AND CONFERENCE COMMITTEE REPORTS

Engrossed Senate Bill 18-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 18-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 18-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 550: yeas 87, nays 0. Report adopted.

Engrossed Senate Bill 67-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 67-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 67-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 551: yeas 90, nays 0. Report adopted.

Engrossed Senate Bill 89-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after

April 11: Engrossed Senate Bill 89-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 89-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 552: yeas 88, nays 1. Report adopted.

Engrossed Senate Bill 378-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 378-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 378-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 553: yeas 90, nays 0. Report adopted.

Engrossed Senate Bill 433-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 433-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 433-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 554: yeas 91, nays 0. Report adopted.

Representative Pierce was excused.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1004.

Turner

Roll Call 555: yeas 60, nays 30. Motion prevailed.

RESOLUTIONS ON FIRST READING

House Concurrent Resolution 77

Representative Turner introduced House Concurrent

Resolution 77:

A CONCURRENT RESOLUTION honoring the Tri-Central High School girls' basketball team, Class 1A 2004-2005 state champions.

Whereas, The Lady Trojans have won the girls' Class 1A state basketball title for three consecutive years;

Whereas, Tri-Central girls' basketball team became the first ever to win three consecutive state championships in Class 1A;

Whereas, The Lady Trojans became the first ever public school to win three consecutive girls' basketball state titles;

Whereas, Tri-Central beat North Vermillion in 2003 to win their first ever state championship in girls' basketball;

Whereas, Tri-Central beat Washington Catholic in 2004 to win their second consecutive state championship for Class 1A;

Whereas, Tri-Central beat Northeast Dubois by a score of 47-46 with 2.4 seconds left to win their third consecutive 2005 state girls' basketball championship;

Whereas, Kaci Allen led the Lady Trojans with a game high 20 points and Meranda Burnett added 12 points;

Whereas, The Lady Trojans finished the 2004-2005 season with a record of 18-7;

Whereas, The Lady Trojans have won two unblemished Hoosier Heartland Conference titles with a three season, 14-1 conference record;

Whereas, Over three seasons, the Lady Trojans have played a fourth season since their tournament games equal another entire regular season with a slate of 20 games in which they were undefeated;

Whereas, The Lady Trojans have made the tiny community of Sharpsville a bold metropolis on the IHSAA map;

Whereas, Coach Kathie Layden has led the girls' varsity basketball team for six years; and

Whereas, The team included Allison Mitchell, Kelly Colbert, Andrea Bowne, Meranda Burnett, Whitney Coffin, Sarah Adams, Janel Cox, Kaci Allen, Amber Suiters, Anne Cage, Sally Adams, Assistant Coaches Dave Wise and Andy Burnett, and Student Managers Amanda Calvin, Betsie Miller and Kyle Ungar: Therefore,

*Be it resolved by the House of Representatives
of the General Assembly of the State of Indiana,
the Senate concurring:*

SECTION 1. The Indiana House of Representatives, the Senate concurring, honors the Tri-Central High School girls' basketball team, Class 1A 2004-2005 state champions.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the coaches, players and student managers of the Tri-Central High School girls' basketball team.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsor: Senator Drozda.

House Concurrent Resolution 78

Representative Turner introduced House Concurrent Resolution 78:

A CONCURRENT RESOLUTION honoring the Tri-Central High School girls' basketball team, Class 1A 2003-2004 state champions.

Whereas, The Lady Trojans enjoyed a 46-36 victory over Washington Catholic to win the Class 1A girls' state basketball championship;

Whereas, Three Lady Trojans scored in double figures with Meranda Burnett leading the way with 15 points and seven assists, Kristen Miller added 12 points and pulled down 7 board and Janel Cox scored 10 points;

Whereas, Meranda Burnett and Kristen Miller were the only returning starters from last year's title squad;

Whereas, Kristen Miller received the Patricia L. Roy Mental Attitude Award in 2004 for Class 1A after being nominated by her

coach and principal for excelling in mental attitude, scholarship, leadership and athletic ability;

Whereas, Kristen Miller was also the first ever Tri-Central athlete to be named to the Indiana All-Star Basketball Team;

Whereas, Sophomore guard Meranda Burnett was named the most valuable player of the Class 1A state tournament;

Whereas, Sophomore guard Janel Cox was named to the All-Tournament Team;

Whereas, Coach Kathie Layden was selected to lead the Indiana girls in the North versus South All-Star game;

Whereas, In the All-Star game, Coach Layden's team won by 10 points after leading by as many as 20 points;

Whereas, The Lady Trojans successfully defended their Hoosier Heartland Conference Title for the second year in a row;

Whereas, Tri-Central finished their season with a 21-6 record; and

Whereas, The team consisted of Kaci Allen, Andrea Bowne, Meranda Burnett, Anne Cage, Ashely Clark, Kelly Colbert, Janel Cox, River Dalton, Andrea DeWitt, Kristen Miller, Allison Mitchell, Allison Thompson, Student Managers Kenny Dearth, Betsie Miller and Kyle Ungar, Trainer Carrie Preston, Student Trainers Kacy Greene and Kayla Burke and Assistant Coaches Dave Wise, Andy Burnett, and Mike Wise and Coach Kathie Layden: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. The Indiana House of Representatives, the Senate concurring, congratulates the Tri-Central High School girls' basketball team, Class 1A 2003-2004 state champions.

SECTION 2. That the Principal Clerk of the Indiana House of Representatives shall transmit a copy of this resolution to the players, student managers, trainers and coaches of Tri-Central High School girls' basketball team.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsor: Senator Drozda.

House Resolution 79

Representative Turner introduced House Resolution 79:

A HOUSE RESOLUTION to honor Mike Tolle for his outstanding career as a coach.

Whereas, Mike Tolle served as coach for 27 years with 24 of those years at Tipton High School;

Whereas, Mike Tolle started his career as an outstanding football player for Elwood High School;

Whereas, Mike Tolle was named All-CIC and All-State Honorable Mention as an Offensive Center during his own football career;

Whereas, Coach Tolle facilitated a family atmosphere beyond practices and after football season;

Whereas, Mike Tolle is a passionate, driven, and respected high school football coach;

Whereas, Coach Tolle used his megaphone for 15 years to bring discipline and excitement to the football program;

Whereas, Coach Tolle attracted many quality football assistants over the years;

Whereas, The Tipton Blue Devils won 12 CIC championship, one Hoosier Conference title, 5 Sectional titles, 2 Regional titles, and 2 Semi-State titles;

Whereas, The Tipton Blue Devils finished as the Class 3A runner-up in 1988 and 1994;

Whereas, The Tipton Blue Devils obtained a 190-73 record during Tolle's coaching career;

Whereas, Coach Tolle's overall career record is 220-85; and

Whereas, Mike Tolle has served the longest as a coach in Tipton's school history and has been its most successful: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. The Indiana House of Representatives recognizes Coach Mike Tolle for his dedication in serving as a positive role model for our youth both on and off the field.

SECTION 2. That the Principal Clerk of the Indiana House of Representatives shall transmit of a copy of this resolution to Coach Mike Tolle and the principal of Tipton High School.

The resolution was read a first time and adopted by voice vote.

House Resolution 80

Representative Koch introduced House Resolution 80:

A HOUSE RESOLUTION expressing support for Naval Support Activity Crane.

Whereas, Naval Support Activity (NSA) Crane is a "Best Value Defense Installation" for the 21st century, unique with its mission and physical capabilities and well-suited for like mission consolidation;

Whereas, NSA Crane, a joint Army-Navy installation, supports all branches of the service with technical and industrial support in weapons, munitions, and pyrotechnic products, and like support for Navy, Marine Corps, and Air Force electronics and electronic warfare systems;

Whereas, NSA Crane has extraordinary diversity in developing, testing, prototyping, acquiring, producing, maintaining, overhauling, and upgrading weapons, munitions, pyrotechnics, electronics, and electronic warfare technologies and products;

Whereas, NSA Crane products are essential to every Navy airplane, ship, submarine, and SEAL team, various Air Force planes, many Army and Marine Corps vehicles, and the Special Operating Force Command Units;

Whereas, NSA Crane is especially relevant to the global war on terror with its agile, adaptable responsiveness to rapidly changing warfighter requirements;

Whereas, Crane's weapons, ordnance, electronics, and electronic warfare expertise parallels USSOCOM, SPECWARCOM, and Marine Corps demands;

Whereas, NSA Crane is a "Best Buy Installation" because of its aggressive business and process re-engineering practices, its placement in a high-quality, low-cost area, and its low labor rates, all of which secured Crane the Department of Defense Installation of the Year (2002) and Value Engineering (2004) awards;

Whereas, NSA Crane has no encroachment from the surrounding communities nor does Crane's mission interrupt, disrupt, or disturb the surrounding communities with its ordnance operations, open air detonation, high power microwave emissions, and ordnance safety arcs;

Whereas, NSA Crane is strategically situated in a sparsely populated area of southern Indiana, presenting a low profile target to terrorist attack, yet benefiting from close proximity to excellent interstate, rail, and major air transportation;

Whereas, NSA Crane has enormous potential to expand its mission because of its 63,000 acres, its millions of square feet of operation and storage capacity, its aggressive military construction program, and its facilities worth \$3.3 billion; and

Whereas, NSA Crane exerts significant, positive impact on its community through competitive wages and major contributions of human resources, which is proudly acknowledged by Indiana in a 2004 unanimous joint resolution and the Military Base Protection Act of 2005 that ensures future encroachment-free operations: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

SECTION 1. That the Indiana House of Representatives expresses its support for NSA Crane.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the Base

Realignment and Closure Commission, Southern Indiana Business Alliance, and the commander of NSA Crane.

The resolution was read a first time and adopted by voice vote.

RESOLUTIONS ON SECOND READING

House Resolution 75

The Speaker handed down on its passage House Resolution 75, introduced by Representative Ruppel:

A HOUSE RESOLUTION urging the United States Congress to appropriate funding for the federal Historic Barn Preservation Act (P.L. 107-171).

The resolution was read a second time and adopted by voice vote.

House Concurrent Resolution 35

The Speaker handed down on its passage House Concurrent Resolution 35, authored by Representatives Burton, Frizzell, Yount, and Foley:

A CONCURRENT RESOLUTION urging the department of transportation to rename the section of Interstate Highway 65 running through Johnson County the Pearl Harbor Memorial Highway.

The resolution was read a second time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsor: Senator Miller.

House Concurrent Resolution 74

The Speaker handed down on its passage House Concurrent Resolution 74, introduced by Representative Walorski:

A CONCURRENT RESOLUTION urging the establishment of an interim study committee on identity theft..

The resolution was read a second time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsor: Senator Hershman.

Senate Concurrent Resolution 11

The Speaker handed down on its passage Senate Concurrent Resolution 11, sponsored by Representatives Pond, Ripley, and Stutzman:

A CONCURRENT RESOLUTION urging the department of transportation to designate Interstate Highway 469 encircling Fort Wayne as the Ronald Reagan Expressway.

The resolution was read a second time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

Senate Concurrent Resolution 12

The Speaker handed down on its passage Senate Concurrent Resolution 12, sponsored by Representatives Hinkle, Ruppel, and Bischoff:

A CONCURRENT RESOLUTION urging the establishment of an interim study committee to study upgrading fire safety for school dormitories and senior care facilities.

The resolution was read a second time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

Senate Concurrent Resolution 13

The Speaker handed down on its passage Senate Concurrent Resolution 13, sponsored by Representatives Ayres, Lehe, and Kuzman:

A CONCURRENT RESOLUTION urging the United States Congress to direct the Federal Communications Commission to adopt regulations or issue an order requiring multichannel video programming distributors that provide service in a television market in a state to carry at least one affiliate of a broadcast network with its city of licensure reference point located in that state.

The resolution was read a second time and adopted by voice vote.

The Clerk was directed to inform the Senate of the passage of the resolution.

Senate Concurrent Resolution 29

The Speaker handed down on its passage Senate Concurrent Resolution 29, sponsored by Representatives Leonard and Ruppel:

A CONCURRENT RESOLUTION urging the department of transportation to name State Road 105 the "Chris Schenkel Highway".

The resolution was read a second time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

Senate Concurrent Resolution 56

The Speaker handed down on its passage Senate Concurrent Resolution 56, sponsored by Representatives Walorski, Welch, and Ruppel:

A CONCURRENT RESOLUTION encouraging shopping malls, stores, and local units of government throughout Indiana to adopt a "Code Adam" child safety protocol.

The resolution was read a second time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

CONFEREES AND ADVISORS APPOINTED

The Speaker announced the appointment of Representatives to conference committees on the following Engrossed Senate Bills:

ESB 432	Conferees: Becker and Pelath Advisor: Frizzell
ESB 460	Conferees: Ayres and Oxley Advisors: Buell and Welch
ESB 498	Conferees: Hinkle and VanHaaften Advisors: Woodruff, Becker, and Avery

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT ESB 481-1; filed April 25, 2005, at 2:35 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 481 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 3, delete lines 7 through 42.

Page 4, delete lines 1 through 12.

Renumber all SECTIONS consecutively.

(Reference is to ESB 481 as printed March 23, 2005.)

C. LAWSON	BUDAK
SIMPSON	CRAWFORD
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT EHB 1265-1; filed April 25, 2005, at 3:04 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1265 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Page 6, delete lines 15 through 18, begin a new line blocked indented and insert:

"(2) Corrects the violation within a time agreed to by the agency and the small business. However, the small business shall be given at least ninety (90) days after the date of the notice described in subdivision (1) to correct the violation.

The small business may correct the violation at any time before the expiration of the period agreed to under this subdivision."

(Reference is to EHB 1265 as printed April 1, 2005.)

POND	DILLON
TINCHER	ROGERS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

The House recessed until the fall of the gavel.

RECESS

The House reconvened at 5:45 p.m. with the Speaker in the Chair.

Representatives Day, Friend, Goodin, Koch, Pierce, and VanHaften, who had been excused, were present. Representatives Budak and Denbo were excused for the rest of the day.

MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: On April 25, 2005, I signed into law House Enrolled Acts 1008, 1052, 1288, and 1398.

MITCHELL E. DANIELS, JR.
Governor

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report 1 on Engrossed Senate Bills 18, 217, 304, 329, and 363.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has concurred in the House amendments to Engrossed Senate Bill 474.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I hereby transmit Senate Enrolled Acts 64, 179, 227, 296, and 539 for signature of the Speaker of the House.

MARY C. MENDEL
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed Senate Concurrent Resolutions 15 and 62 and the same are herewith transmitted to the House for further action.

MARY C. MENDEL
Principal Secretary of the Senate

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT ESB 509-1; filed April 25, 2005, at 3:58 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 509 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-22-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) **Except as provided in subsection (b)**, this article does not apply to the following types of activities:

(1) A contract between governmental bodies except for a

contract authorized under this article.

(2) A public works project.

(3) A collective bargaining agreement between a governmental body and its employees.

(4) The employment relationship between a governmental body and an employee of the governmental body.

(5) An investment of public funds.

(6) A contract between a governmental body and a body corporate and politic.

(7) A contract for social services.

(8) A contract with a body corporate and politic.

(b) IC 5-22-3-7 applies to any:

(1) contract;

(2) project;

(3) agreement;

(4) employment relationship; or

(5) investment;

described in subsection (a).

SECTION 2. IC 5-22-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **Except as otherwise provided**, the definitions in this chapter apply throughout this article.

SECTION 3. IC 5-22-2-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.3. "Affiliate" means a business entity that effectively controls or is controlled by a contractor or associated with a contractor under common ownership or control, whether by shareholdings or other means, including a subsidiary, parent, or sibling of a contractor.

SECTION 4. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section applies to every use of funds by a governmental body. However, this section does not apply to a contract in which one (1) party is a political subdivision, including a body corporate and politic created by or authorized by a political subdivision.

(b) A prospective contractor may not contract with a governmental body unless the prospective contractor includes the following certifications as terms of the contract with the governmental body:

(1) The contractor and any principals of the contractor certify that:

(A) the contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC 24-4.7;

(ii) IC 24-5-12; or

(iii) IC 24-5-14;

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the contractor will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(2) The contractor and any principals of the contractor certify that an affiliate or principal of the contractor and any agent acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:

(A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(c) If a certification in subsection (b) concerning compliance with IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the contractor, an affiliate or a principal of the contractor, or an agent acting on behalf of the contractor or an affiliate or a principal of the contractor violates the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, the attorney general may bring a civil action in the circuit or superior court of Marion County to:

(1) void a contract under this section, subject to subsection (d); and

(2) obtain other proper relief.

However, a contractor is not liable under this section if the contractor or an affiliate of the contractor acquires another business entity that violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14 within the preceding three hundred sixty-five (365) days before the date of the acquisition if the acquired business entity ceases violating IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, as of the date of the acquisition.

(d) If:

(1) the attorney general notifies the contractor, department of administration, and budget agency in writing of the intention of the attorney general to void a contract; and

(2) the attorney general does not receive a written objection from the department of administration or budget agency, sent to both the attorney general and the contractor, within thirty (30) days of the notice;

a contract between a contractor and a governmental body is voidable at the election of the attorney general in a civil action brought under subsection (c). If an objection of the department of administration or the budget agency is submitted under subdivision (2), the contract that is the subject of the objection is not voidable at the election of the attorney general unless the objection is rescinded or withdrawn by the department of administration or the budget agency.

(e) If the attorney general establishes in a civil action that a contractor is knowingly, intentionally, or recklessly liable under subsection (c), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

(1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(2) The attorney general's reasonable expenses incurred in:

(A) investigation; and

(B) maintaining the civil action.

SECTION 5. IC 24-4.7-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. In addition, a contractor who contracts or seeks to contract with the state:

(1) may be prohibited from contracting with the state; or

(2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, or any agent acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law.

SECTION 6. IC 24-5-0.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes a transfer of structured settlement payment rights under IC 34-50-2.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means:

(A) a seller, lessor, assignor, or other person who regularly

engages in or solicits consumer transactions, including a manufacturer, wholesaler, or retailer, whether or not ~~he~~ the person deals directly with the consumer; or

(B) a person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(4) "Subject of a consumer transaction" means the personal property, real property services, or intangibles furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

~~(7)~~ (7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after ~~his~~ the consumer's acceptance of the offer to cure.

~~(7)~~ (8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

~~(8)~~ (9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

~~(9)~~ (10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

~~(10)~~ (11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 7. IC 24-5-0.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act **or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:**

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)), except for purchases of time shares and camping club memberships. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. **Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.**

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

(1) issue an injunction;

(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers; and

(3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in

such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five hundred dollars (\$500) per violation.

(h) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(i) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (j).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(j) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (i) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

SECTION 8. IC 24-5-12-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails to comply with any provision of:

(1) this chapter; or

(2) IC 24-4.7;

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. **An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5.** An action by the attorney general for a violation of this chapter **or IC 24-4.7** may be brought in the circuit or superior court of Marion County.

SECTION 9. IC 32-27-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by ~~the initial home buyer~~. **one (1) of the following:**

(1) The builder.

(2) An individual or individuals renting the home from the builder.

(3) An individual or individuals living in the home at the request of the builder.

(4) The initial home buyer.

SECTION 10. IC 32-27-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the initial home buyer the following:

(1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.

(2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of:

(A) plumbing;

- (B) electrical;
- (C) heating;
- (D) cooling; or
- (E) ventilating;

systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 or IC 32-15-7 before their repeal) survive the passing of legal or equitable title in the new home to a home buyer.

(c) **An individual identified in section 7(1), 7(2), or 7(3) of this chapter who is selling a new home shall notify the purchaser of the home in writing on or before the date of closing or transfer of the new home of:**

(1) **the warranty date (as defined in section 7 of this chapter); and**

(2) **the amount of time remaining under the warranty.**

SECTION 11. [EFFECTIVE UPON PASSAGE] IC 5-22-1-3, IC 5-22-2-1, IC 24-4-7-5-1, and IC 24-5-12-23, all as amended by this act, and IC 5-22-3-7, as added by this act, apply only to a contract entered into or renewed after the effective date of this act.

SECTION 12. An emergency is declared for this act.

(Reference is to ESB 509 as printed March 29, 2005.)

CLARK	YOUNT
LANANE	KUZMAN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT EHB 1159-1; filed April 25, 2005, at 4:08 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1159 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 12-7-2-131.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 131.3. "Missing endangered adult", for purposes of IC 12-10-18, means an individual at least eighteen (18) years of age who is reported missing to a law enforcement agency and is, or is believed to be:

- (1) **a temporary or permanent resident of Indiana;**
- (2) **at a location that cannot be determined by an individual familiar with the missing individual; and**
- (3) **incapable of returning to the missing individual's residence without assistance by reason of:**

- (A) **mental illness;**
- (B) **mental retardation;**
- (C) **dementia; or**
- (D) **another physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care.**

SECTION 2. IC 12-7-2-174.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 174.8. "Endangered adult medical alert" means an alert indicating that law enforcement officials are searching for a missing endangered adult.

SECTION 3. IC 12-10-18 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 18. Reports of Missing Endangered Adults

Sec. 1. (a) A law enforcement agency that receives a

notification concerning a missing endangered adult from:

- (1) **the missing endangered adult's:**
 - (A) **guardian;**
 - (B) **custodian; or**
 - (C) **guardian ad litem; or**
- (2) **an individual who:**
 - (A) **provides the missing endangered adult with home health aid services;**
 - (B) **possesses a health care power of attorney for the missing endangered adult; or**
 - (C) **has evidence that the missing endangered adult has a condition that may prevent the missing endangered adult from returning home without assistance;**

shall prepare an investigative report on the missing endangered adult, if based on the notification, the law enforcement agency has reason to believe that an endangered adult is missing.

(b) The investigative report described in subsection (a) may include the following:

(1) **Relevant information obtained from the notification concerning the missing endangered adult, including the following:**

- (A) **A physical description of the missing endangered adult.**
- (B) **The date, time, and place that the missing endangered adult was last seen.**
- (C) **The missing endangered adult's address.**

(2) **Information gathered by a preliminary investigation, if one was made.**

(3) **A statement by the law enforcement officer in charge setting forth that officer's assessment of the case based upon the evidence and information received.**

Sec. 2. The law enforcement agency shall prepare the investigative report described by section 1 of this chapter as soon as practicable, and if possible not later than five (5) hours after the law enforcement agency receives notification of a missing endangered adult.

Sec. 3. (a) Upon completion of the report described by section 1 of this chapter, if the law enforcement agency has reason to believe that public notification may assist in locating the missing endangered adult, the law enforcement agency may immediately forward the contents of the report to:

- (1) **all law enforcement agencies that have jurisdiction in the location where the missing endangered adult lives and all law enforcement agencies that have jurisdiction in the location where the missing endangered adult was last seen;**
- (2) **all law enforcement agencies to which the person who made the notification concerning the missing endangered adult requests the report be sent, if the law enforcement agency determines that the request is reasonable in light of the information received;**
- (3) **all law enforcement agencies that request a copy of the report;**
- (4) **one (1) or more broadcasters that broadcast in an area where the missing endangered adult may be located;**
- (5) **the Indiana data and communication system (IDACS); and**
- (6) **the National Crime Information Center's Missing Person File, if appropriate.**

(b) Upon completion of the report described by section 1 of this chapter, a law enforcement agency may forward a copy of the contents of the report to one (1) or more newspapers distributed in an area where the missing endangered adult may be located.

(c) After forwarding the contents of the report to a broadcaster or newspaper under this section, the law enforcement agency may request that the broadcaster or newspaper:

- (1) **notify the public that there is an endangered adult medical alert; and**
- (2) **broadcast or publish:**
 - (A) **a description of the missing endangered adult; and**
 - (B) **any other relevant information that would assist in locating the missing endangered adult.**

(d) A broadcaster or newspaper that receives a request concerning a missing endangered adult under subsection (c) may,

at the discretion of the broadcaster or newspaper:

- (1) notify the public that there is an endangered adult medical alert; and
- (2) broadcast or publish:
 - (A) a description of the missing endangered adult; and
 - (B) any other relevant information that would assist in locating the missing endangered adult.

Sec. 4. A law enforcement agency may begin an investigation concerning a missing endangered adult as soon as possible after receiving notification of the missing endangered adult.

Sec. 5. An individual described in section 1(a)(1) or 1(a)(2) of this chapter who notifies a law enforcement agency concerning a missing endangered adult shall notify the law enforcement agency when the missing endangered adult is found.

Sec. 6. (a) A broadcaster or newspaper that receives a report of a missing endangered adult from a law enforcement agency under section 3 of this chapter is immune from civil liability for an act or omission related to:

- (1) the broadcast or publication of information contained in the report, including:
 - (A) a description of the missing endangered adult; and
 - (B) any other relevant information that would assist in locating the missing endangered adult; or
- (2) the decision of the broadcaster or newspaper not to broadcast or publish information contained in the report.

(b) The civil immunity described in subsection (a) does not apply to an act or omission that constitutes gross negligence or willful, wanton, or intentional misconduct.

SECTION 4. IC 22-14-2-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. Whenever a member of the arson division of the office retires after at least twenty (20) years of service, the office shall, in recognition of the member's service to the office, do the following:

- (1) Allow the member to retain the service weapon issued to the member by the office.
- (2) Issue the member a badge that indicates the member is a retired member of the arson division of the office.
- (3) Issue the member an identification card that contains the following information:
 - (A) The name of the office and the arson division.
 - (B) The name of the member.
 - (C) The member's position title before the member's retirement.
 - (D) A statement that the member is retired.
 - (E) A statement that the member is authorized to retain the service weapon issued to the member by the office.

SECTION 5. IC 34-30-2-43.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 43.3. IC 12-10-18-6 (Concerning a broadcaster or newspaper that receives a report concerning an endangered adult medical alert).

SECTION 6. IC 34-30-2-152.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 152.2. IC 35-47-13-6 (Concerning the state or a law enforcement agency for issuing evidence that a retired law enforcement officer meets the training and qualification standards to carry certain firearms).

SECTION 7. IC 35-44-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) As used in this section, "consumer product" has the meaning set forth in IC 35-45-8-1.

(b) As used in this section, "misconduct" means a violation of a departmental rule or procedure of a law enforcement agency.

(c) A person who reports, by telephone, telegraph, mail, or other written or oral communication, that:

- (1) the person or another person has placed or intends to place an explosive, a destructive device, or other destructive substance in a building or transportation facility;
- (2) there has been or there will be tampering with a consumer product introduced into commerce; or
- (3) there has been or will be placed or introduced a weapon of mass destruction in a building or a place of assembly;

knowing the report to be false commits false reporting, a Class D felony.

(d) A person who:

- (1) gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false;
- (2) gives a false alarm of fire to the fire department of a governmental entity, knowing the alarm to be false;
- (3) makes a false request for ambulance service to an ambulance service provider, knowing the request to be false;
- (4) gives a false report concerning a missing child (as defined in IC 10-13-5-4) or missing endangered adult (as defined in IC 12-7-2-131.3) or gives false information in the official investigation of a missing child or missing endangered adult knowing the report or information to be false; or
- (5) makes a complaint against a law enforcement officer to the state or municipality (as defined in IC 8-1-13-3) that employs the officer:

- (A) alleging the officer engaged in misconduct while performing the officer's duties; and
- (B) knowing the complaint to be false;

commits false informing, a Class B misdemeanor. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to an innocent person.

SECTION 8. IC 35-45-17 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 17. Panhandling

Sec. 1. (a) As used in this chapter, "panhandling" means to solicit an individual:

- (1) on a street or in another public place; and
- (2) by requesting an immediate donation of money or something else of value.

(b) The term includes soliciting an individual:

- (1) by making an oral request;
- (2) in exchange for:
 - (A) performing music;
 - (B) singing; or
 - (C) engaging in another type of performance; or
- (3) by offering the individual an item of little or no monetary value in exchange for money or another gratuity under circumstances that would cause a reasonable individual to understand that the transaction is only a donation.

(c) The term does not include an act of passively standing, sitting, performing music, singing, or engaging in another type of performance:

- (1) while displaying a sign or other indication that a donation is being sought; and
- (2) without making an oral request other than in response to an inquiry by another person.

Sec. 2. A person who knowingly or intentionally does any of the following commits panhandling, a Class C misdemeanor:

- (1) Panhandling after sunset and before sunrise.
- (2) Panhandling when the individual being solicited is:
 - (A) at a bus stop;
 - (B) in a:
 - (i) vehicle; or
 - (ii) facility;
- used for public transportation;
- (C) in a motor vehicle that is parked or stopped on a public street or alley, unless the person soliciting the individual has the approval to do so by a unit of local government that has jurisdiction over the public street or alley;
- (D) in the sidewalk dining area of a restaurant; or
- (E) within twenty (20) feet of:
 - (i) an automated teller machine; or
 - (ii) the entrance to a bank.
- (3) Panhandling while touching the individual being solicited without the solicited individual's consent.
- (4) Panhandling while the individual being solicited is standing in line and waiting to be admitted to a commercial

establishment.

(5) Panhandling while blocking:

- (A) the path of the individual being solicited; or
- (B) the entrance to a building or motor vehicle.

(6) Panhandling while using profane or abusive language:

- (A) during a solicitation; or
- (B) after the individual being solicited has declined to donate money or something else of value.

(7) Panhandling while making a statement, a gesture, or another communication to the individual being solicited that would cause a reasonable individual to:

- (A) fear for the individual's safety; or
- (B) feel compelled to donate.

(8) Panhandling with at least one (1) other individual.

(9) Panhandling and then following or accompanying the solicited individual without the solicited individual's consent after the solicited individual has declined to donate money or something else of value.

SECTION 9. IC 35-47-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 13. Retired Law Enforcement Officers Identification for Carrying Firearms

Sec. 1. As used in this chapter, "firearm" has the meaning set forth in 18 U.S.C. 926C(e).

Sec. 2. As used in this chapter, "law enforcement agency" means an agency or a department of:

- (1) the state; or
- (2) a political subdivision of the state;

whose principal function is the apprehension of criminal offenders.

Sec. 3. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17(a). The term includes an arson investigator employed by the office of the state fire marshal.

Sec. 4. After June 30, 2005, all law enforcement agencies shall issue annually to each person who has retired from that agency as a law enforcement officer a photographic identification.

Sec. 5. (a) In addition to the photographic identification issued under section 4 of this chapter, after June 30, 2005, a retired law enforcement officer who carries a concealed firearm under 18 U.S.C. 926C must obtain annually, for each type of firearm that the retired officer intends to carry as a concealed firearm, evidence that the retired officer meets the training and qualification standards to carry that type of firearm established:

- (1) by the retired officer's law enforcement agency, for active officers of the agency; or
- (2) by the state, for active law enforcement officers in the state.

A retired law enforcement officer bears any expense associated with obtaining the evidence required under this subsection.

(b) The evidence required under subsection (a) is one (1) of the following:

- (1) For compliance with the standards described in subsection (a)(1), an endorsement issued by the retired officer's law enforcement agency with or as part of the photographic identification issued under section 4 of this chapter.
- (2) For compliance with the standards described in subsection (a)(2), a certification issued by the state.

Sec. 6. An entity that provides evidence required under section 5 of this chapter is immune from civil or criminal liability for providing the evidence.

SECTION 10. [EFFECTIVE JULY 1, 2005] IC 35-44-2-2, as amended by this act, and IC 35-45-17-2, as added by this act, apply only to crimes committed after June 30, 2005.

SECTION 11. An emergency is declared for this act.

(Reference is to EHB 1159 as reprinted April 5, 2005.)

J. SMITH	ZAKAS
SUMMERS	CRAYCRAFT
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1403 because it conflicts with HEA 1039-2005 without properly recognizing the existence of HEA 1039-2005, has had Engrossed House Bill 1403 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1403 be corrected as follows:

Page 5, line 8, after "IC 35-43-5-1" insert ", AS AMENDED BY HEA 1039-2005, SECTION 1,".

Page 6, between lines 5 and 6, begin a new paragraph and insert:

"(g) "Drug or alcohol screening test" means a test that:

- (1) is used to determine the presence or use of alcohol, a controlled substance, or a drug in a person's bodily substance; and

- (2) is administered in the course of monitoring a person who is:

- (A) incarcerated in a prison or jail;
- (B) placed in a community corrections program;
- (C) on probation or parole;
- (D) participating in a court ordered alcohol or drug treatment program; or
- (E) on court ordered pretrial release."

Page 6, line 6, delete "(g)" and insert "(h)".

Page 6, line 9, delete "(h)" and insert "(i)".

Page 6, line 28, delete "(i)" and insert "(j)".

Page 6, line 34, delete "(j)" and insert "(k)".

Page 7, line 1, delete "(k)" and insert "(l)".

Page 7, line 4, delete "(l)" and insert "(m)".

Page 7, line 6, delete "(m)" and insert "(n)".

Page 7, line 9, delete "(n)" and insert "(o)".

Page 7, line 11, delete "poor".

Page 7, line 12, delete "relief, township assistance," and insert "township assistance,".

Page 7, line 14, delete "(o)" and insert "(p)".

Page 7, line 28, delete "(p)" and insert "(q)".

Page 7, line 31, delete "(q)" and insert "(r)".

Page 7, line 35, delete "(r)" and insert "(s)".

(Reference is to EHB 1403 as printed April 1, 2005.)

WHETSTONE, Chair
PELATH, R.M.M.
THOMAS, Author

Report adopted.

RESOLUTIONS ON FIRST READING

Senate Concurrent Resolution 15

The Speaker handed down Senate Concurrent Resolution 15, sponsored by Representatives Murphy and Buell:

A CONCURRENT RESOLUTION honoring Roncalli High School, Indianapolis, Indiana, on the occasion of its victory in the Class 4A state football championship.

Whereas, The Roncalli High School Rebels are the 2004 Class 4A state football champions for the third consecutive year;

Whereas, This victory marks an 18th straight postseason win and a record eighth championship for the Rebels, breaking a three-way tie among Roncalli, Ben Davis, and Bishop Chatard for the most state titles in Indiana high school football history;

Whereas, Coach Bruce Scifres earned his sixth state championship, moving him into a tie for second place on the list of coaches with the most championship titles;

Whereas, Roncalli (13-2) scored 35 unanswered points in the second and third quarters on its way to a 35-10 triumph over Wawasee at the RCA Dome in Indianapolis;

Whereas, The Rebels also tied several Class 4A records, including most passing touchdowns by a team, 3; most touchdown receptions, 3; most touchdown passes, 3, Andrew Hasty; and most point after touchdown kicks, 5, Tim Curren; and

Whereas, Excellence at this level requires teamwork and cooperation, and it is fitting that effort such as this be recognized: Therefore,

*Be it resolved by the Senate
of the General Assembly of the State of Indiana,
the House of Representatives concurring:*

SECTION 1. That the Indiana General Assembly congratulates the Roncalli High School Rebels on their third consecutive Class 4A state football championship and to wish them well in their future endeavors.

SECTION 2. That copies of this resolution be transmitted by the Secretary of the Senate to team members, coaches, managers, and members of the Roncalli High School administration.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

Senate Concurrent Resolution 62

The Speaker handed down Senate Concurrent Resolution 62, sponsored by Representative Cochran:

A CONCURRENT RESOLUTION congratulating The New Albany High School Acappella Singers of New Albany, Indiana, for their selection to represent the State of Indiana at the 2005 National Festival of the States in Washington, D.C.

Whereas, The 2005 National Festival of the States is a prestigious event hosted by Washington, D.C. and recognized by the District of Columbia, the US Navy Memorial Foundation and the National Park Service with the goal of including at least one choral group from each of the fifty states;

Whereas, The Acappella Singers will perform April 22 through April 25, 2005 for enthusiastic audiences consisting of Washington, D.C. residents, tourists and veterans groups;

Whereas, The singers in this Washington, D.C. tour choir are primarily members of the New Albany High School Acappella Singers with a few singers joining the group from the high school's other two ensembles. The Acappella Singers, Ashley Arkels, Amy Baumgartle, Joseph Bohn, Heather Bougher, Gwendolyn Carnighan, Ricky Case, Stephanie Denhard, Jared Eaton, Wes Fair, Lindsey Graeter, Allison Hack, Rachel Henshaw, Marlea Jenkins, Wesley Jenkins, Jeremy Jordan, Andrea King, Sara King, Claire Longest, Kevin Love, Sagan Massey, Frank Matthews, Tiffany Mattingly, Rob Mendlik, Lauren Messer, Jessica Miller, Cassandra Mills, Nicole Mitchell, Lisa Nelson, Brandon Perkins, Ryan Rainey, Mark Raison, Sam Sher, Tiffany Smith, and Savannah Stephens are led by Linda DeRungs, Choral Director; and

Whereas, The New Albany High School ensembles receive superior ratings at the ISSMA Organizational Contests and the Acappella Singers regularly qualifies for the top 16 ISSMA State Choir Finals. The choral department performs over thirty concerts during the school year and perform annually with the Louisville, Kentucky Orchestra, and have performed with the Louisville Ballet, Kentucky Opera and the Dallas, Texas Brass. The Acappella Singers represented Indiana in 1994 for the Normandy Liberation and Bicentennial Celebration in Washington, D.C.: Therefore,

*Be it resolved by the Senate
of the General Assembly of the State of Indiana,
the House of Representatives concurring:*

SECTION 1. That the General Assembly congratulate the New Albany High School Acappella Singers for their selection to represent the State of Indiana at the 2005 National Festival of the States in Washington, D.C.

SECTION 2. That the Secretary of the Senate shall submit a copy of the resolution to The New Albany High School, to each of the Acappella Singers and to the Choral Director, Linda DeRungs.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

ACTION ON RULES SUSPENSIONS AND CONFERENCE COMMITTEE REPORTS

Engrossed Senate Bill 217-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 217-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 217-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 556: yeas 70, nays 24. Report adopted.

Engrossed Senate Bill 224-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 224-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 224-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 557: yeas 93, nays 0. Report adopted.

Engrossed Senate Bill 295-1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 295-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 295-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 558: yeas 94, nays 0. Report adopted.

Representative Bauer was excused.

Engrossed Senate Bill 329-1**COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 329-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 329-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 559: yeas 69, nays 24. Report adopted.

Engrossed Senate Bill 304-1**COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 304-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 304-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 560: yeas 90, nays 0. Report adopted.

Representative Bauer, who had been excused, was present. Representative Behning was excused for the rest of the day.

Engrossed Senate Bill 363-1**COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 363-1.

WHETSTONE, Chair

Report adopted.

HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 363-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Representatives Saunders and Welch were excused from voting, pursuant to House Rule 47. Roll Call 561: yeas 75, nays 17. Report adopted.

MOTIONS TO CONCUR IN SENATE AMENDMENTS

HOUSE MOTION

Mr. Speaker: I move that the House reconsider its actions whereby

it dissented from the Senate amendments to Engrossed House Bill 1776 and that the House now concur in the Senate amendments to said bill.

BUELL

Roll Call 562: yeas 91, nays 0. Motion prevailed.

CONFERENCE COMMITTEE REPORTS**CONFERENCE COMMITTEE REPORT**

EHB 1200-1; filed April 25, 2005, at 5:50 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1200 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-11-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The state examiner shall require from every municipality and every state or local governmental unit, entity, or instrumentality financial reports covering the full period of each fiscal year. Except as provided by subsection (b), these reports shall be prepared, verified, and filed with the state examiner ~~within~~ **not later than** thirty (30) days after the close of each fiscal year.

(b) The following shall prepare, verify, and file the reports required under subsection (a) not later than sixty (60) days after the ~~end~~ **close** of each fiscal year:

(1) A municipal government.

(2) A public library.

(3) **A district (as defined in IC 13-11-2-58(a)) that owns a landfill (as defined in IC 13-11-2-116(c)).**

SECTION 2. IC 13-19-3-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 9. (a) **This section does not apply to an expansion of a solid waste landfill:**

(1) **that accepts only construction\demolition waste; and**

(2) **for which a construction\demolition waste permit was issued before January 1, 2005.**

(b) **A solid waste landfill that accepts only construction\demolition waste shall comply with setback requirements concerning public schools established by the board under 329 IAC 10-16-11 for municipal solid waste landfills.**

SECTION 3. IC 13-21-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as provided in subsections (b) through ~~(d)~~, (e), the board of a county district consists of the following members:

(1) Two (2) members appointed by the county executive from the membership of the county executive.

(2) One (1) member appointed by the county fiscal body from the membership of the fiscal body.

(3) One (1) member:

(A) who is the executive of the municipality having the largest population in the county if that municipality is a city; or

(B) appointed from the membership of the legislative body of a town if the town is the municipality having the largest population in the county.

(4) One (1) member of the legislative body of the municipality with the largest population in the county appointed by the legislative body of that municipality.

(5) One (1) member:

(A) who is the executive of a city in the county that is not the municipality having the largest population in the county; or
(B) who is a member of the legislative body of a town that is not the municipality having the largest population in the county;

and who is appointed by the executive of that county to represent the municipalities in the county other than the

municipality having the largest population.

(6) One (1) additional member appointed by the county executive from the membership of the county executive.

(b) If a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) is designated as a county district, the executives of the three (3) cities in the county having the largest populations each serve as a member of the board or may appoint a member of the legislative body of their city to serve as a member of the board. If a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) is designated as a county district, the executives of the two (2) cities in the county having the largest populations each serve as a member of the board. If a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) is designated as a county district, the board of that county district must include the following:

(1) One (1) member of the legislative body of the city having the second largest population in the county, appointed by the president of the city legislative body.

(2) One (1) member of the legislative body of a town located in the county, appointed by the judge of the circuit court in the county.

(c) If a county having a consolidated city is designated a county district, the board of public works established under IC 36-3-5-6 constitutes the board of the county district.

(d) If a county designated as a county district has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the board of the district consists of the following members:

(1) One (1) member appointed by the county executive from the membership of the county executive.

(2) Two (2) members appointed from the county fiscal body appointed from the membership of the county fiscal body.

(3) The executive of each second or third class city or a member of the legislative body of their city appointed by the executive.

(4) One (1) member of the legislative body of each town appointed by the legislative body.

(5) One (1) member of the legislative body of the municipality with the largest population in the county appointed by the legislative body of that municipality.

(6) If a local government unit in the county has an operating final disposal facility located within the unit's jurisdiction, one (1) member of the unit's board of public works appointed by the board of public works.

(e) This subsection applies only to a county that does not contain a city. If the county executive and the county fiscal body of a county designated as a county district agree, the board of the district shall consist of the following nine (9) or ten (10) members:

(1) The three (3) members of the county executive.

(2) Two (2) members of the county fiscal body, chosen by the county fiscal body.

(3) One (1) member of each of the town legislative bodies of the four (4) or five (5) towns in the county having the largest population, chosen by each town legislative body.

SECTION 4. IC 13-21-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) The requirements of this section:

(1) are in addition to the requirements set forth in IC 6-1.1-18.5-7(b); and

(2) do not apply to a district that:

(A) owns a landfill;

(B) will use property tax revenue to:

(i) construct a new landfill cell; or

(ii) close a landfill cell;

at the landfill; and

(C) has received approval from the county fiscal body of the county in which the landfill is located to construct or close the landfill cell.

(b) To be eligible to include within the district's budget for the following year tax revenue derived from the imposition of a property tax, the first year that a property tax will be imposed and any subsequent year in which the proposed tax levy will increase by five percent (5%) or more, a board must present identical resolutions to

each of the county fiscal bodies within the district seeking approval for the use of property tax revenue within the district. The resolution must state the proposed property tax levy and the proposed use of the revenue. The resolution must be stated so that:

(1) a "yes" vote indicates approval of the levy and the proposed use of property tax revenue within the district; and

(2) a "no" vote indicates disapproval of the levy and the proposed use of property tax revenue within the district.

(c) For a resolution described in subsection (b) to be approved by the county fiscal body:

(1) the county fiscal body must record the vote taken on the resolution under subsection (b) before May 1 of the year in which the vote was taken; and

(2) the recorded vote must indicate approval of the use of property tax revenue within the district.

(d) If all of the county fiscal bodies within a district do not record the approval described in subsection (c) before May 1 of the year in which the vote under subsection (b) was taken, the board may not:

(1) impose; or

(2) include within the budget of the board;

a property tax for the year following the year in which the vote was taken.

(e) Notwithstanding subsection (d), after the first year a tax is imposed under this section, the resolution required by subsection (b) for a district that is located in more than two (2) counties need only be approved by a majority of the county fiscal bodies for the counties in which the district is located.

(f) A district may not issue bonds to be repaid, directly or indirectly, with money or property tax revenue of the district until a majority of the members of each of the county fiscal bodies within a district passes a resolution approving the bond issue.

SECTION 5. IC 13-26-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 2. (a) Except as provided in subsection (b), the rates or charges for a sewage works may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water used on the premises.

(3) The number and size of water outlets on the premises.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(7) A combination of these or other factors that the board determines is necessary to establish nondiscriminatory, just, and equitable rates or charges.

(b) This subsection applies only to a district in which a campground brought a legal action after January 1, 2000, and before April 1, 2003, against a board concerning sewage service billed at a flat rate. If a campground is billed for sewage service at a flat rate under subsection (a), the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the sewers. for one (1) year. The highest meter reading for a calendar week for the campground during the year shall be used to determine the resident equivalent units for the campground. If a campground elects to be billed by use of a meter:

(1) the rate charged by a board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and

(2) the amount charged by a board for the campground's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of:

(A) the actual amount that would be charged for the sewage discharged during the month by the campground as measured by the meter; or

(B) the lowest monthly charge paid by the campground for sewage service during the previous period beginning June 1 and ending August 31.

(c) If a campground does not install a meter under subsection (b) and is billed for sewage service at a flat rate under subsection (a), for a calendar year beginning after December 31, 2004, each

campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit. The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit.

(d) The board may impose additional charges on a campground under this subsection subsections (b) and (c) if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

- (1) the installation of:
 - (A) oversized pipe; or
 - (B) any other unique equipment;
- necessary to provide sewage service for the campground; and
- (2) excessive concentrations of biochemical oxygen demand (BOD) that exceed federal pollutant standards.

SECTION 6. IC 13-26-11-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 2.1. (a) As used in this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) This section applies to an owner or operator of a campground described in section 2(b) or 2(c) of this chapter who disputes:

- (1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 2(b)(1) of this chapter;
- (2) the number of resident equivalent units determined for the campground under section 2(c) of this chapter; or
- (3) that any additional charges imposed on the campground under section 2(d) of this chapter are reasonable or nondiscriminatory.

(c) If an owner or operator:

- (1) makes a good faith attempt to resolve a disputed matter described in subsection (b)(1) through (b)(3) through:
 - (A) any grievance or complaint procedure prescribed by the board; or
 - (B) other negotiations with the board; and
- (2) is dissatisfied with the board's proposed disposition of the matter;

the owner or operator may file with the commission a written request for review of the disputed matter and the board's proposed disposition of the matter to be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

- (1) the owner or operator of the campground; and
- (2) the board;

by United States mail. Not later than seven (7) days after

receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

(g) The commission shall maintain a record of all requests for a review made under this section. The record must include:

- (1) a copy of the appeals division's and commission's decision under subsection (f) for each dispute filed; and
- (2) any other documents filed with the appeals division or commission under this section.

The record must be made available for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3.

(h) The right of a campground owner or operator to request a review under this section is in addition to the right of the campground owner or operator to file a petition under section 15 of this chapter as a freeholder of the district.

(i) The commission may adopt rules under IC 4-22-2 to implement this section.

SECTION 7. IC 14-33-16.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16.5. Dissolution of Smaller District and Assumption of Operations, Obligations, and Assets by Larger District

Sec. 1. This chapter applies to any two (2) conservancy districts that:

- (1) are contiguous; and
- (2) share at least one (1) common purpose set forth in IC 14-33-1-1.

Sec. 2. As used in this chapter:

- (1) "freeholder" means an owner of real property, as reflected in the real property tax records of the county auditor;
- (2) "larger district" means, of the two (2) districts referred to in section 1 of this chapter, the one (1) that has the larger number of freeholders; and
- (3) "smaller district" means, of the two (2) districts referred to in section 1 of this chapter, the one (1) that has the smaller number of freeholders.

Sec. 3. (a) The freeholders of a smaller district may initiate dissolution proceedings under this chapter by filing a petition with the county auditor of the county in which most of the smaller district's area is located. The petition must be signed by at least the lesser of:

- (1) fifty (50); or
- (2) five percent (5%);

of the smaller district's freeholders.

(b) A petition under subsection (a) may be circulated and presented in separate parts. All the parts of the petition constitute a single petition.

(c) The petitioning freeholders must sign the petition, showing:

- (1) the name and address of each petitioner; and
- (2) the date of the signature.

(d) A petition must state that the petitioners desire an election on the question of whether:

- (1) the smaller district will dissolve and become part of the larger district; and
- (2) the larger district will assume the smaller district's operation, obligations, and assets.

(e) A person who presents a petition from the smaller district's freeholders under this section to the county auditor must verify and certify the signatures on the petition upon oath.

Sec. 4. (a) Not later than thirty (30) days after a petition is filed with the county auditor under section 3 of this chapter, the county auditor shall:

- (1) prepare and certify a list of freeholders of the smaller district;
- (2) make the list available for inspection by any person; and
- (3) determine and certify whether the petition:
 - (A) was signed by the number of freeholders required under section 3(a) of this chapter; and
 - (B) otherwise meets the requirements of this chapter.

(b) A deficiency in the list of the smaller district's freeholders

or an omission of the name of a freeholder does not void the election or the election's outcome.

(c) If the county auditor determines that a petition filed under section 3 of this chapter meets the requirements of this chapter, the auditor shall, not later than forty (40) days after receiving the petition, forward a notice to the board of directors of the larger district by personal delivery or by certified mail. The notice must:

(1) inform the larger district that a petition was filed under section 3 of this chapter by the freeholders of the smaller district; and

(2) ask if the larger district is willing and able to assume the smaller district's operation, obligations, and assets if the smaller district's freeholders vote to dissolve the smaller district.

(d) Not later than thirty (30) days after receiving the notice from the county auditor under subsection (c), the board of directors of the larger district may pass a resolution stating that:

(1) the larger district is willing and able to assume the smaller district's operation, obligations, and assets; and

(2) upon becoming part of the larger district, the freeholders of the smaller district will:

(A) become full and equal freeholders of the larger district; and

(B) pay the same special benefits taxes and user charges generally charged by the larger district.

(e) If the board of directors of the larger district passes a timely resolution under subsection (d):

(1) the board of directors of the larger district must forward a true and accurate copy of the resolution to the county auditor by personal delivery or by certified mail not later than ten (10) business days after the board passes the resolution; and

(2) the board of directors of the smaller district must hold a dissolution and assumption election of the smaller district's freeholders under this chapter.

(f) If the board of directors of the larger district:

(1) does not pass a timely resolution under subsection (d); or

(2) passes a timely resolution under subsection (d), but does not timely forward a copy of the resolution under subsection (e)(1);

the dissolution proceedings that began with the filing of a petition under section 3 of this chapter are ended.

Sec. 5. Not later than ten (10) days after the county auditor receives a resolution from the board of directors of the larger district under section 4 of this chapter, the county auditor shall, by personal delivery or by certified mail, notify the board of directors of the smaller district that the board of directors of the smaller district must hold the election referred to in section 4(e)(2) of this chapter.

Sec. 6. (a) Not later than ten (10) days after receipt of a notice under section 5 of this chapter, the board of directors of the smaller district shall fix the following:

(1) A convenient and suitable place for the smaller district's election.

(2) The date for the election that is at least sixty (60) days after the date on which the county auditor notifies the smaller district's board under section 5 of this chapter.

(b) The voting place must open at 9 a.m. local time and remain open for balloting continuously until 9 p.m. local time. If the number of freeholders in the smaller district is too great for balloting at a single voting place while allowing each freeholder a reasonable time to cast a ballot, the board shall arrange for the number of voting places necessary to accommodate the freeholders eligible to vote.

(c) Notice of the date, time, place, and purpose of the election must be given for two (2) consecutive weeks in an English language newspaper of general circulation published in each county having land in the smaller district, with the last publication:

(1) not less than fifteen (15) days; and

(2) not more than thirty (30) days;

before the date of the election.

(d) The board of directors of the smaller district shall also cause individual notice of the election to be given to all the

smaller district's freeholders by first class mail.

(e) The notice published under subsection (c) and the individual freeholder notice mailed under subsection (d) must be in the following form:

Notice of a Dissolution and Assumption Election

to the Freeholders of the _____
(insert smaller district) Conservancy District

1. You are a freeholder (i.e. a real property owner) of the _____ (insert smaller district) Conservancy District.

As a freeholder, you are one of the owners of the _____ (insert smaller district) Conservancy District.

2. A legally required number of the freeholders of the _____ (insert smaller district) Conservancy District has filed a petition with the _____ (insert county

name) County Auditor requesting that the _____ (insert smaller district) Conservancy District be dissolved, and that the operation, obligations, and assets of the _____ (insert smaller district) Conservancy District be assumed by the _____ (insert larger district) Conservancy District.

3. The _____ (insert larger district) Conservancy District is contiguous to, has the same purpose as, and has a greater number of freeholders than the _____ (insert smaller district) Conservancy District.

4. The Board of Directors of the _____ (insert larger district) Conservancy District has passed a resolution stating:

A. That the _____ (insert larger district) Conservancy District is willing to assume the operation, obligations, and assets of the _____ (insert smaller district) Conservancy District; and

B. That upon becoming part of the _____ (insert larger district) Conservancy District, the freeholders of the _____ (insert smaller district) Conservancy District will become full and equal freeholders of the _____ (insert larger district) Conservancy District and be subject to and pay the same special benefits taxes and user charges generally charged by the (insert larger district) Conservancy District.

5. An election of the freeholders of the (insert smaller district) Conservancy District is set for the day of _____, _____, from 9:00 a.m. to 9:00 p.m., at the following location(s): _____.

6. The question presented for the election is whether the _____ (insert smaller district) Conservancy District should be dissolved, and whether the _____ (insert larger district) Conservancy District should assume the operations, obligations, and assets of the _____ (insert smaller district) Conservancy District.

7. A majority of the votes cast at the election will determine the question of whether the _____ (insert smaller district) Conservancy District should be dissolved, and whether the _____ (insert larger district) Conservancy District should assume the operations, obligations, and assets of the _____ (insert smaller district) Conservancy District.

8. As a freeholder of the _____ (insert smaller district) Conservancy District, you are entitled to and encouraged to vote at the election.

/ss/ Board of Directors, _____
(insert smaller district) Conservancy District

(f) If the board of directors of the smaller district fails to hold the election as required by this chapter, the county auditor of the county in which the smaller district's petition was filed shall:

(1) conduct the election as required by this chapter; and

(2) bill the board of directors of the smaller district for the county auditor's costs incurred for the election.

(g) The board of directors of the smaller district shall promptly pay a bill submitted to the smaller district under subsection (f).

Sec. 7. After receiving a notice under section 5 of this chapter, the board of directors of the smaller district shall prepare and furnish ballots in sufficient number in the following form:

"Shall the _____ (insert smaller district) Conservancy District be dissolved and its operations, obligations, and assets be assumed by the _____ (insert larger district) Conservancy District?

[] Yes [] No"

Sec. 8. After receiving a notice under section 5 of this chapter, the board of directors of the smaller district shall do the following:

- (1) Appoint an assistant secretary.
- (2) Provide a voting list at each voting place.

Sec. 9. (a) Before the voting begins under this chapter, the board of directors of the smaller district shall appoint three (3) freeholders of the district as clerks to conduct the dissolution and assumption election.

(b) Before casting a vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the district secretary.

(c) If:

- (1) a clerk finds a freeholder's name is omitted from the list; and
- (2) all three (3) clerks determine that the freeholder's name should be added to the list;

the clerks shall place the freeholder's name on the list and the freeholder may vote.

Sec. 10. (a) After an election is held under this chapter, the assistant secretary of the smaller district shall do the following:

- (1) Keep the ballots safe and secure until the end of the voting period.
- (2) At the end of the voting period, present all ballots cast to the three (3) clerks.
- (3) Record the election results in the records of the smaller district.
- (4) Certify the results of the election to the county auditor and the circuit court having supervisory jurisdiction over the smaller district as promptly as possible.

(b) The clerks of the smaller district shall do the following:

- (1) Count the ballots.
- (2) Report the results of the election to the secretary in writing over the signature of each clerk.

Sec. 11. In an election held under this chapter, a majority of all votes cast by the freeholders of the smaller district determine the question of the dissolution of the smaller district and the larger district's assumption of the smaller district's operations, obligations, and assets.

Sec. 12. The costs of a smaller district's election held under this chapter shall be paid by the smaller district.

Sec. 13. (a) In an election held under this chapter, if a majority of the freeholders of the smaller district votes to dissolve the smaller district, not later than sixty (60) days after the election, as the final action of the board of directors of the smaller district, the board shall:

- (1) make a full and final accounting to the circuit court having supervisory jurisdiction over the smaller district; and
- (2) file all records of the smaller district with the court.

(b) If the smaller district's board of directors fails to timely comply with subsection (a), the circuit court having supervisory jurisdiction over the smaller district shall order the board to comply or suffer a finding of contempt of court.

(c) The larger district shall take custody and control of the smaller district's operations, obligations, and assets on the earlier of:

- (1) the date the smaller district's board of directors complies with subsection (a)(1); or
- (2) the sixtieth day after the election.

(d) The larger district is directly responsible for payment of the smaller district's bonds or notes outstanding upon the larger district taking custody and control of the smaller district's operations, obligations, and assets.

(e) When the smaller district's board of directors complies with subsection (a), the circuit court shall issue an order:

- (1) dissolving the smaller district; and
- (2) discharging the board of directors of the smaller district.

SECTION 8. An emergency is declared for this act.

(Reference is to EHB 1200 as reprinted March 22, 2005.)

THOMPSON	C. LAWSON
MOSES	S. SMITH
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

On the motion of Representative Pierce, the House adjourned at 6:20 p.m., this twenty-fifth day of April, 2005, until Tuesday, April 26, 2005, at 10:00 a.m.

BRIAN C. BOSMA
Speaker of the House of Representatives

M. CAROLINE SPOTTS
Principal Clerk of the House of Representatives